IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1158 OF 2005

WITH

CIVIL APPLICATION NO.1432 OF 2005

Virendra Tiwari ...Appellant

Versus

The Municipal Corporation of

Greater Mumbai ...Respondent

AND

APPEAL FROM ORDER NO.1159 OF 2005

WITH

CIVIL APPLICATION NO.1433 OF 2005

Jameel Ahmed Hussain Qureshi ...Appellant

Versus

The Municipal Corporation of

Greater Mumbai ...Respondent

.....

Mr.V.R.Tripathi for Appellants.

Mr.Malandkar for Respondent.

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CORAM: A.M.KHANWILKAR, J.

APRIL 7, 2006.

P.C.

1. Heard Counsel for the parties.

2. I find no reason to interfere with the order passed by the Court below refusing to grant ad-interim relief. Good reasons are recorded for rejecting prayer for ad-interim relief. To get over this position, Counsel for the Appellants would contend that the Trial Court has adopted inconsistent approach inasmuch as, in all, three Suits were filed before the Trial Court, but the Trial Court has refused to grant ad-interim relief only in two Suits and continued ad-interim relief in favour of the Appellants in the third Suit, though all the suit structures were similarly placed. It is not possible to accept this submission. On the other hand, I find substance in the stand taken on behalf of the Corporation that there is marked difference in the structures in the present two Appeals and that in the third Suit. In the third Suit, the unauthorised structure is open structure of G.I.sheet with acrylic sheet covering,

whereas, in the two appeals, which are before this Court, the unauthorised structure is enclosure of part terraces with brick masonry walls and G.I.sheet roof, which is a permanent structure erected, not sanctioned in the original plan.

3. Counsel for the Respondent Corporation has produced original plan before me, as also the photographs. I have examined those plans and photographs of all the three suit structures to reassure myself. I am in agreement with the conclusion reached by the Trial Court that no prima facie case has been made out, as a consequence, ad-interim relief has been refused and/or vacated. Hence, these appeals should fail.

4. At this stage, Counsel for the Appellants submits that the Appellants are wiling to make application to the Corporation for regularisation of the suit structures. It is stated that the Society has granted permission to the Appellants to make such application. If such application is filed within three weeks from today, the Competent Authority, Executive Engineer (Building Proposals)

Western Suburbs (H & K) E Ward), will proceed to decide the same on its own terms in accordance with law. The said application be finally disposed of as expeditiously as possible, preferably within four weeks from the receipt thereof by the competent Authority.

5. In case, the Appellants fail to make formal application to the specified competent Authority within the aforesaid time, it will be open to the Officials of the Corporation to proceed against the suit structures in accordance with law. Whereas, if application is made in time, till the said application is finally decided, no precipitative steps be taken in respect of the suit structures.

6. Appeals disposed of accordingly.

A.M.KHANWILKAR, J.